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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/006,671	12/10/2001	Otfried Kistner	V-262.00	2215

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EXAMINER

CHEN, STACY BROWN

ART UNIT	PAPER NUMBER
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1648

DATE MAILED: 07/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action	Application No. 10/006,671	Applicant(s) KISTNER ET AL.	
	Examiner Stacy B Chen	Art Unit 1648	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 23 June 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: none.

Claim(s) objected to: none.

Claim(s) rejected: 1-4, 7-11, 14-17 and 26-31.

Claim(s) withdrawn from consideration: 26.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____

Continuation of 2. NOTE: The proposed amendment, if entered, would overcome the rejection of claim 31 under 35 U.S.C. 112, second paragraph. However, the proposed amendment to claims 1, 8 and 17 changes the scope of the filter pore size, which would require further consideration regarding new matter and prior art.

Continuation of 7. Claims 1, 8, 17 and all depending claims would be rejected under 35 U.S.C. 112, first paragraph, for introducing new matter into the claims that was not originally disclosed upon filing. The filter pore size range is disclosed in the originally filed specification as "between about 0.1 and about 0.5" microns (page 7, [028]). Applicant has proposed amending the range to "between 0.1 and 0.5" microns, which is not disclosed. Further, the proposed change in filter size requires further consideration regarding prior art. Since Applicant's specification intends to encompass a filter that has a range of between about 0.1 and 0.5 microns, and even up to about 0.6 microns as indicated in the response filed December 4, 2003, page 17), and the prior art of record teaches a 0.65 micron filter, further consideration is required as to whether the difference of 0.05 microns contributes over the prior art. Therefore, the rejection of claims 1-4, 7-11, 14-17 and 27-31 under 35 U.S.C. 103(a) as being unpatentable over Dubensky, Jr. et al. (5,789,245) in view of Yu et al. (Vaccine, 1997) is maintained for reasons of record.



Stacy B. Chen
July 14, 2004
571-272-0896



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